

ORDER NO. 3736

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
First-Class Package Service Contract 61 (MC2016-195)
Negotiated Service Agreement

Docket No. CP2016-278

ORDER APPROVING AMENDMENT TO
FIRST-CLASS PACKAGE SERVICE NEGOTIATED SERVICE AGREEMENT

(Issued January 9, 2017)

I. INTRODUCTION

The Postal Service seeks to amend a First-Class Package Service negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

¹ Notice of United States Postal Service of Amendment to First-Class Package Service Contract 61, with Portions Filed Under Seal, December 27, 2016 (Notice). The amendment is an attachment to the Notice (Amendment).

In Order No. 3524, the Commission approved the First-Class Package Service Contract 61 negotiated service agreement (Existing Agreement).² On December 27, 2016, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On December 28, 2016, the Commission issued a notice reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service asserts that the Amendment will not materially affect the cost coverage of the contract. *Id.*

II. COMMENTS

Comments were filed by the Public Representative.⁴ No other person submitted comments. The Public Representative reviewed the Amendment, the financial model filed under seal, and other related documentation. PR Comments at 2. Based on that review, she concludes that the Existing Agreement, as amended, should continue to generate sufficient revenue to cover costs and satisfy 39 U.S.C. § 3633(a). *Id.*

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's

² See Docket Nos. MC2016-195 and CP2016-278, Order Adding First-Class Package Service Contract 61 to the Competitive Product List, September 20, 2016 (Order No. 3524).

³ Docket No. CP2014-1, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, December 28, 2016.

⁴ Public Representative Comments on Postal Service Notice of Amendment to First-Class Package Service Contract 61, January 6, 2017 (PR Comments).

institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Amendment replaces sections of the Existing Agreement concerning volume commitment, annual adjustment, and expiration date and termination. Notice, Attachment A at 1-2. The Amendment does not materially affect the underlying financial analysis of the Existing Agreement. Thus, the Commission finds that the Existing Agreement, as amended, comports with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

Other considerations. The Postal Service states that the Amendment shall become effective one business day after the date that the Commission completes its review. Notice at 1. The Existing Agreement became effective on September 22, 2016. See Docket Nos. MC2016-195 and CP2016-278, Order No. 3524 at 5. The Amendment changes the Existing Agreement's expiration date to three years after the initial effective date unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.⁵ The Existing Agreement, as amended, will expire on September 21, 2019.

The Amendment also contains a provision that allows the parties to extend the Existing Agreement for two 90-day periods if a successor agreement is being prepared and the Commission is notified within at least seven days of the Existing Agreement

⁵ Notice, Attachment A at 2. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

expiring.⁶ During the extension periods, prices will be adjusted as described in the Amendment. Notice, Attachment A at 2. The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices automatically adjust during the extension period, making it likely that the Existing Agreement, as amended, will continue to cover its attributable costs; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the First-Class Package Service Contract 61 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary

⁶ *Id.* As the Commission noted in Order No. 1773, the Postal Service clarified that substantially similar language in Priority Mail Contract 60 contemplates the Postal Service filing any notices of extension with the Commission *at least one week prior to* the expiration of the contract, as opposed to the instant contract's "at least seven (7) days prior to the contract's expiration date." See Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013, at 3; see also Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2.